United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

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United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

—against—

THOMAS McNAMARA,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

REPLY BRIEF for APPELLANT McNAMARA

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This brief is submitted in reply to the Brief for Appellee which was received on April 22, 1975.[1]

POINT I

THE PROSECUTION DID NOT AND COULD NOT PROVE CONSPIRACY TO OBSTRUCT INTERSTATE COMMERCE WHICH IS A SUBSTANTIVE OFFENSE UNDER THE HOBBS ACT

The government would have this Court overlook the fact that its indictment of Mr. McNamara specifically charged him with conspiracy "to obstruct, delay and affect commerce and the movement of articles and commodities in

[1] To the extent that the arguments raised in appellant Merolla's brief and reply brief are applicable to appellant McNamara's appeal, they are hereby adopted.

such commerce by extortion, as that term is defined in Section 1951 of Title 18, United States Code." McA, p. 16a.

The government seemingly would also have this Court gloss the language of the Hobbs Act (cited verbatim in our main brief[2] at pages 2-3), most pertinently: "Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by . . . extortion or . . . conspires so to do . . ."

It should be remembered that Congress adopted this language to prevent the Teamsters from extorting tribute from midwestern farmers for the privilege of delivering their produce in New York City. In other words, the raison d'etre of the act is protection of interstate commerce itself as opposed to protection of an aspect of the federal social order only tangentially related to such commerce.

Failure of Proof

What troubled then Mr. McNamara's attorney at trial and what is still troublesome in view of the charge in the indictment and the statutory language is how the trial judge could have submitted the case to the jury after having ruled subsequent to the first, abortive trial that "[*t*]*he con-*

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[2] A review of this brief subsequent to its filing on March 14, 1975 has resulted in the discovery of the following citation errors on page 9: Footnote 14 should read McA page 1688a rather than transcript page 1557. Footnote 15 should read McA page 1526a rather than transcript page 1396. Footnote 16 should read McA pages 1424a-25a rather than transcript pages 1293-94.

The government's criticism in footnote 3, page 5 of its brief of the text accompanying our footnotes 15 and 16 is correct. The characterizations that Mr. McNamara is a "very good" and "conscientious" person are both attributable to Goberman's sister-in-law and not the first to his wife. Goberman's wife apparently could not bear to be with him, at least during the time of his dealings with Mr. McNamara. *Cf.* McA, pp. 747a-48a.

spiracy was not aimed at commerce" [3] and after the prosecution's evidence at the second trial turned out to be essentially the same as that at the first; that is, after the prosecution had failed to prove a conspiracy to obstruct interstate commerce. Indeed, Goberman testified, as set forth in our main brief at pages 35-36, that the threats or physical abuse allegedly involved herein had a directly contrary purpose.

We argued in our main brief that the prosecution would have had to prove that Mr. McNamara specifically conspired to obstruct interstate commerce to sustain the district court's jurisdiction of the alleged extortion. We referred this Court to its unanimous decisions in *United States* v. *Crimmins,* 123 F.2d 271 (2d Cir. 1941), *United States* v. *Barone,* 467 F.2d 247 (2d Cir. 1972), and *United States* v. *Alsondo,* 486 F.2d 1339 (2d Cir. 1973), wherein convictions were reversed for conspiracy to violate 18 U.S.C. §415 (1939) (transportation of stolen or feloniously taken goods, securities, or monies), 18 U.S.C. §1084 (transmission of wagering information) and 18 U.S.C. §111 (assaulting, resisting, or impeding certain officers or employees), respectively. They were reversed on the ground that such conspiracy convictions required a showing of specific knowledge of factual circumstances conferring federal jurisdiction. *See, e.g., United States* v. *Alsondo,* 486 F.2d at 1343.

On March 19, 1975, five days after we had filed our main brief herein, the Supreme Court reversed *Alsondo sub nom. United States* v. *Feola,* 43 U.S.L.W. 4404. The government now seeks at page 54 of its brief to rely on the Court's decision. But such reliance is unfounded.

In *Feola,* the Court merely decided, over a scathing dissent,[4] that "where knowledge of the facts giving rise to

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[3] McA, p. 112a.

[4] 43 U.S.L.W. at 4412 *et seq.*

federal jurisdiction is not necessary for conviction of a substantive offense embodying a *mens rea* requirement, such knowledge is equally irrelevant to questions of responsibility for conspiracy to commit that offense." 43 U.S.L.W. at 4412.

In *Feola,* as well as in *Barone* and *Crimmins,* the substantive offense in question was conspiracy in violation of the federal conspiracy statute, presently 18 U.S.C. §371, since, unlike the Hobbs Act, none of the three statutes had a self-contained proscription against conspiracy.[5] Hence, the offenses described in these statutes, assaulting a federal officer in *Feola,* transmission of wagering information over telephone lines in interstate commerce in *Barone* and receipt of stolen securities after they had moved across state lines in *Crimmins* were simply the federal jurisdictional bases for the conspiracy prosecutions and nothing more.

Here, of course, interstate commerce was not only the jurisdictional predicate; it was also the core of the offense charged. In *Feola,* the Supreme Court recognized that such a distinction is critical:

> . . . The significance of labeling a statutory requirement as "jurisdictional" is not that the requirement is viewed as outside the scope of the evil Congress intended to forestall, but merely that the existence of the fact that confers federal jurisdiction need not be one in the mind of the actor at the time he perpetrates the act

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[5] It is perhaps instructive to note in this regard that the government may not grasp the fact that the Hobbs Act itself makes conspiracy a substantive offense since it states at the start of its brief, page 3, that the appellants herein were convicted of conspiring to violate 18 U.S.C. §1951 *and Section 371.* This, of course, is not so. The indictment did not charge a violation of Section 371.

> made criminal by the federal statute. The question, then, is not whether the requirement is jurisdictional, but whether it is jurisdictional *only*. 43 U.S.L.W. at 4406 n. 9 (emphasis added).

Thus, where, as here, the statutory requirement is not only jurisdictional, but substantive, as well, satisfaction of the former is not concurrent satisfaction of the latter. To be sure, the Court in *Feola* did not do away with the necessity of proving criminal intent to the degree necessary to convict for the offense charged. *See* 43 U.S.L.W. at 4409.

In the case at bar, the substantive offense charged was conspiracy—*not* conspiracy to violate a federal statute, but rather, *conspiracy*—conspiracy to obstruct the free movement of goods across state lines within the purview of the Hobbs Act. And the prosecution was required to prove as a critical element of this offense criminal intent on the part of Mr. McNamara to obstruct, delay and affect interstate commerce.

A jury charge with regard to intent in a conspiracy case which is in use in federal trial courts today is as follows:

> Before the jury may find that a defendant, or any other person, has become a member of a conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the defendant, or other person who is claimed to have been a member, willfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.
>
> To act or participate willfully means to act or participate voluntarily and intentionally, and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, to act or participate with the bad purpose either to disobey or to disregard the law. So,

> if a defendant, or any other person, with understanding of the unlawful character of a plan, knowingly encourages, advises or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a willful participant—a conspirator.[6]

The prosecution did not prove such an intent to further the alleged purpose of the conspiracy—obstruction of interstate commerce—and the trial judge clearly recognized this. *See supra,* pp. 2-3. Unfortunately, however, the trial judge neither granted the defendants' motions for judgment of acquittal nor did he charge the jury[7] in conformity with the above sample charge. Not to have done so was clearly erroneous. In short, it should not have become necessary now to state the obvious, to wit, that the intent involved in a conspiracy to commit the state crime of extortion, for example, is not coincident with the intent involved in a conspiracy to obstruct interstate commerce.

Impossibility of Proof

There is no question but that this inappropriate and unnecessarily complex case confused the able and experienced trial judge,[8] at least partially, and the jury[9] completely, not

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[6] E. Devitt & C. Blackmar, Federal Jury Practice & Instructions §29.05 at 435-36 (2d ed. 1970).

[7] That part of the court's charge on elements which the government considers sufficient to sustain the convictions herein is set forth at McA, pp. 2251a-52a and 2256a-57a. *See* Brief for Appellee, pp. 19-21 n. 15.

[8] *See, e.g.,* Brief for Appellant McNamara, p. 6, n. 6.

[9] As argued at page 33 of our main brief, the jury's verdict, acquitting some, convicting others, was fatally flawed in view of the precise evidence before it. In arguing this, we do not imply that, as a general rule, restated by the Supreme Court recently in *Hamling* v. *United States,* 418 U.S. 87, 101 (1974), consistency in verdicts is required; simply, that on the particular facts before

to mention the attorneys. The cause of this confusion is evident from the Hobbs Act cases which the government has so laboriously cited in its brief. Many did not involve conspiracy and can therefore be relegated to the margin in the interest of brevity.[10] The remaining cases include *Hulahan* v. *United States,* 214 F.2d 441 (8th Cir.), *cert. denied,* 348 U.S. 856 (1954); *Nick* v. *United States,* 122 F.2d 660 (8th Cir.), *cert. denied,* 314 U.S. 687 (1941); *United States* v. *Addonizio,* 451 F.2d 49 (3d Cir. 1971), *cert. denied,* 405 U.S. 936 (1972); *United States* v. *Amato,* 495 F.2d 545 (5th Cir.), *cert. denied,* 42 L.Ed.2d 286 (1974); *United States* v. *Augello,* 451 F.2d 1167 (2d Cir. 1971), *cert. denied,* 405 U.S. 1070 (1972); *United States* v. *Biondo,* 483 F.2d 635 (8th Cir. 1973), *cert. denied,* 415 U.S. 947 (1974); *United*

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the jury herein, it could not have convicted appellants and yet have acquitted defendants DeLiso and Alphonse Merolla.

Having correctly told the jury that he did "not understand . . . that in this case the Government contends that it . . . introduced evidence which would prove conspiracy apart from the evidence of the threats and acts of violence against . . . Goberman" [McA, pp. 2252a-53a], it was error then for Judge Dooling to have given the generally appropriate charge to the jury that the "verdict need not be the same as to all defendants." *Id.* at 2248a, 2270a.

[10] *Battaglia* v. *United States,* 383 F.2d 303 (9th Cir. 1967), *cert. denied,* 390 U.S. 907 (1968); *Stirone* v. *United States,* 361 U.S. 212 (1960); *United States* v. *Crowley,* 504 F.2d 992 (7th Cir. 1974); *United States* v. *DeMet,* 486 F.2d 816 (7th Cir. 1973), *cert. denied,* 416 U.S. 969 (1974); *United States* v. *Gill,* 490 F.2d 233 (7th Cir. 1973), *cert. denied,* 417 U.S. 968 (1974); *United States* v. *Green,* 246 F.2d 155 (7th Cir.), *cert. denied,* 355 U.S. 871 (1957); *United States* v. *Lowe,* 234 F.2d 919 (3d Cir.), *cert. denied,* 352 U.S. 838 (1956); *United States* v. *Mitchell,* 463 F.2d 187 (8th Cir. 1972), *cert. denied,* 410 U.S. 969 (1973); *United States* v. *Nakaladski,* 481 F.2d 289 (5th Cir.), *cert. denied,* 414 U.S. 1064 (1973); *United States* v. *Pacente,* 503 F.2d 543 (7th Cir.), *cert. denied,* 42 L.Ed.2d 642 (1974); *United States* v. *Provenzano,* 334 F.2d 678 (3d Cir.), *cert. denied,* 397 U.S. 947 (1964); *United States* v. *Shackelford,* 494 F.2d 67 (9th Cir.), *cert. denied,* 417 U.S. 934 (1974); *United States* v. *Staszcuk,* 502 F.2d 875 (7th Cir. 1974).

States v. *DeMasi,* 445 F.2d 251 (2d Cir.), *cert. denied,* 404 U.S. 882 (1971); *United States* v. *Glasser,* 443 F.2d 994 (2d Cir.), *cert. denied,* 404 U.S. 854 (1971); *United States* v. *Hyde,* 448 F.2d 815 (5th Cir. 1971), *cert. denied,* 404 U.S. 1058 (1972); *United States* v. *Nadaline,* 471 F.2d 340 (5th Cir.), *cert. denied,* 411 U.S. 951 (1973); *United States* v. *Tropiano,* 418 F.2d 1069 (2d Cir. 1969), *cert. denied,* 397 U.S. 1075 (1970); and *United States* v. *Varlack,* 225 F.2d 665 (2d Cir. 1955).

In each of these cases, the defendants, understandably, were readily distinguishable from the victimized businesses or men. Union representatives were the defendants in *Hulahan, Nick* and *Glasser.* Their crimes were directed at construction companies, movie house owners and shops not utilizing union-installed plate glass, respectively. Racketeers were the defendants in *Amato, Augello* and *DeMasi.* They conspired to extort either restaurants or in *DeMasi,* a night club owner. In *Addonizio,* of course, the defendants were city officials, their victims public bidders. In *Biondo,* employees sought to victimize their market-owner employer. In *Hyde,* the intended victims were insurance and small loan companies, the defendant a state attorney general. And in both *Nadaline* and *Tropiano,* one competitor sought to obstruct another.

In sum, while we stated in our main brief, and rightly so, that the Hobbs Act has been consistently applied against illegal practices of labor unions[11] and while we indicated, as well, that the government in recent years has stretched the Hobbs Act to other areas of activity, and with a

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[11] *Not* that, as the government misstates at page 21 of its brief, the act has been applied *"only"* against illegal union practices.

modicum of success,[12] this stretching has never reached a fact pattern such as exists in the case at bar.

Not only has the government, as far as it is concerned, read organized labor out of the history of the Hobbs Act, in this case it also seeks to expunge the codified caption of chapter 95 of Title 18, U.S.C., *Racketeering,* and to forget about whose commerce was involved. Simply stated, the voluminous record contains not an iota of even prosecutorial innuendo to the effect that Mr. McNamara is or was a racketeer.[13] More importantly, Mr. McNamara was charged with conspiracy to obstruct commerce, but the only evidence presented to the jury with respect to commerce showed that the building and site were his. And the steel joints and roof decks and overhead doors were for him. And the automobiles, which, no thanks to Goberman, ultimately arrived on schedule, were for his customers.

Viewed from this perspective, and comparing the above cases, the confusion on the part of the triers of fact and law is understandable. For Mr. McNamara, to follow the prosecution's approach, was both perpetrator and actual victim. This factual impossibility makes the correct conclusion obvious. The prosecution could not prove a conspiracy on the part of Mr. McNamara to obstruct interstate commerce since the commerce involved was his, and a businessman does not conspire with others to obstruct his own business

We cited *Varlack* in our main brief. The government attempts to rely on the case in its brief.[14] In *Varlack,* typi-

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[12] *Compare* the cases cited in the text above *with* footnote 50 on pages 21-22 of our main brief.

[13] The tendencies in this regard were all Goberman's, as the record so clearly reveals.

[14] *See* Brief for Appellee, pp. 38, 55.

cally another case involving organized labor, Judge Medina's careful presentation of the facts is revealing. All three defendants, who were officials of the International Longshoremen's Association, were charged in a two-count indictment with conspiracy to obstruct commerce in violation of the Hobbs Act, and one of the defendants was charged with obstructing commerce. Two were convicted of conspiracy, the third with actual obstruction.

The defendants had demanded payments from the American Sugar Refining Company as the price for offloading in Philadelphia sugar from ships utilizing new mechanized methods intended to effect "a substantial reduction in the labor force necessary to unload the sugar." 225 F.2d at 667. When the company balked at the attempted extortion, a work stoppage ensued, and the cargo remained on board. The company ultimately paid off the defendants, who had traveled between Philadelphia and New York City as part of the effectuation of their scheme.

A conspiracy more directly aimed at and involving interstate and even foreign commerce cannot be imagined. This is the type of crime the Hobbs Act was intended to punish and which involved acts, "the natural effect of which will be to affect interstate commerce."[15] *Nick* v. *United States,* 122 F.2d at 673; *United States* v. *Varlack,* 225 F.2d at 672. Can it seriously be said that the facts in the case at bar

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[15] The trial judge's charge on this point was, in part, as follows:

> . . . if you believe that the defendants conspired to or did threaten to obstruct, delay or affect the movement of such sugar from the boat to the refinery in Philadelphia . . . then, as a matter of law, those acts would obstruct, delay, or affect commerce or the movement of articles in commerce as defined in the Act. 225 F.2d at 671.

even remotely resemble those in *Varlack* or that the natural and intended effect of Mr. McNamara's acts was to obstruct his own business? We think not.

POINT II

THIS ONE WITNESS CASE INVOLVED SERIOUS ERRORS OF FACT, LAW AND JUDGMENT

Having lost the very same type of Hobbs Act argument[16] in 1971 in the United States District Court for the Eastern District of Louisiana and then in the Supreme Court in 1973 in *United States* v. *Enmons,* 335 F. Supp. 641, *aff'd,* 410 U.S. 396, the government seeks to resurrect it herein—at the expense of the orderly administration of criminal justice.

Such a resurrection must be based, of course, upon the selling to this Court, as the prosecution did below, of Harry Goberman. The Brief for Appellee represents a skillful attempt to do this, necessarily calling upon most, if not all, of the foul language, ethnic slurs and innuendoes contained in the entire record as hearsay or otherwise. Indeed, so exalted is Goberman apparently in the eyes of the government that it considers his "part" of the transcript worthy of special notation.[17] Be this as it may, this Court has the entire record of the case before it and can determine Goberman's true level. Suffice it to say again that his admitted

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[16] As we indicated at page 19 of our main brief, the government argued that the act unambiguously and without qualification proscribes interference with commerce by extortion. This argument was flatly rejected by the Supreme Court in *Enmons.*

[17] *See* Brief for Appellee, p. 2, footnote.

criminal record and, more importantly, penchant for prevarication under oath speak for themselves, but not for an ability on the part of the government to corroborate.

What does not speak appropriately, however, is that part of the trial judge's charge to the jury without specific regard to Goberman's testimony. We referred in our main brief at page 32 to the rule set forth by the Supreme Court in *Gordon* v. *United States,* 344 U.S. 414 (1953), that

> where, as here, the government's case may stand or fall on the jury's belief or disbelief of one witness, his credibility is subject to close scrutiny. 344 U.S. at 417.

We also cited the recent Hobbs Act decision of the Fifth Circuit Court of Appeals in *United States* v. *Partin,* 493 F.2d 750 (5th Cir. 1974), which decision the government contends is "inapposite."[18] This is wrong. In fact, the court held that a charge like the one given by Judge Dooling,[19] where the prosecution had no case without the testimony of an ex-convict and self-admitted perjurer, is a "fatal trial blemish". 493 F.2d at 760.

We cited verbatim the best part of the inadequate charge herein at page 32 of our brief. The government apparently draws comfort in citing the court's entire charge to the jury regarding witnesses.[20] But if one reads the entire charge carefully, its fatal flaw is obvious: Judge Dooling did not attempt to distinguish Harry Goberman from the rest of the witnesses.

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[18] Brief for Appellee, p. 43, n. 23.

[19] For the inadequate charge of the trial court in *Partin,* see 493 F.2d at 761.

[20] *See* Brief for Appellee, pp. 42-43, n. 22; McA, pp. 2266a-68a.

It is instructive to compare the arguably pertinent parts of the charge complained of herein with the charge of District of Columbia Chief Judge George L. Hart, Jr. in a recent, well-publicized trial where the government's case also rested essentially on one, less-than-credible witness:

Charge Here	*Hart Charge*
You may consider the appearance and manner of each witness on the witness stand, the witness' apparent candor or lack of it, and the character of the testimony given, whether the testimony contains inconsistencies or discrepancies, whether it is intrinsically credible or seems to you in whole or part improbable, and whether it conflicts with other testimony or is consistent with other testimony in the case.[21] . . . In considering the credibility of a witness you may take into account the fact that he has been previously convicted of a crime or crimes. You may also take into account evidence that a witness has admitted the commission of other acts that were in violation of the law.[22]	The witness Jacobsen has testified here under an agreement that charges against him would be dismissed. You are instructed that the testimony of an informer who provides evidence against the defendant who has been permitted to plead to a lesser offense or for personal advantage or vindication must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the informer's testimony has been affected by interest or by prejudice against the defendant. You should scrutinize the testimony of an informer closely to determine whether it is slanted in such a way as to place guilt upon the defendant in order to further the witness' own interest. You should receive such testimony with suspicion and act upon such testimony with caution. The testimony of an admitted or convicted perjurer should be received with caution and scrutinized with care.[23]

[21] McA, p. 2267a.

[22] *Id.* at 2268a; Brief for Appellant McNamara, p. 32.

[23] *United States* v. *Connally*, Crim. No. 74-440 (D.D.C.), transcript of proceedings on April 17, 1975, pp. 1294-95.

Clearly, with respect to Goberman, the charge to the jury should have been similar to the charge in Washington, since Goberman initiated the prosecution, undoubtedly to further his own economic interests. Witness his two lawsuits presently pending in New York Supreme Court in Nassau County against Mr. McNamara, namely, *HarMac Contractors Co. et al.* v. *Thomas McNamara et al.*, Index No. 3306/73, Calendar No. H-1432 (Sup. Ct., Nassau County), and *Harold Goberman* v. *John McNamara et al.*, Index No. 9589/73 (Sup. Ct., Nassau County).

The government seeks here, as it did in the court below,[24] to concoct Goberman as the true commodity in commerce. The Brief for Appellee argues on several occasions that he was "heavily involved" in interstate commerce. *See, e.g.*, pp. 18, 28. This is nonsense as a matter of both fact and law.

As the record indicates, and we pointed out in our main brief, Goberman had nothing and was involved in nothing at the time he started to work for Mr. McNamara, who had to loan him $1,500 to purchase the house trailer to keep the rain off his head at the site.[25] Furthermore, he never developed more of an actual stake in the project after it had commenced. Nevertheless, insofar as Goberman has a claim for breach of contract, he has brought an action in the New York Supreme Court in Nassau County, as, of course, he had every right to do. But this alleged breach of contract was and is not a matter for either Judge Dooling or the government to rely on. *Cf.* Brief for Appellee, p. 36.

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[24] *See, e.g.*, McA, p. 1883a; Brief for Appellant McNamara, p. 34.

[25] *See, e.g.*, McA, pp. 381a, 387a-88a, 724a; Brief for Appellant McNamara, p. 13.

We referred to the recent Supreme Court decision in *Gulf Oil Corp.* v. *Copp Paving Co.*, 42 L.Ed.2d 378 (1974), in our main brief. In that case, the Court held that sales of asphaltic concrete to federal interstate highway contractors were "not sales 'in commerce' as a matter of law within the jurisdictional ambit of Robinson-Patman §2(a) and Clayton §§3 and 7." 42 L.Ed.2d at 389. In view of this, can it seriously be argued that Goberman was "in commerce" as a matter of law in this case? We think not.

Recognizing then that errors were made at trial with regard to both the facts and the law, the main shortcoming in this whole affair, espousing the cause of Harry Goberman, was, as we stated in our main brief, a lack of good judgment. In this regard, it is perhaps useful to consider a speech of Attorney General, later Mr. Justice, Robert H. Jackson, delivered at the Second Annual Conference of United States Attorneys held at the Department of Justice on April 1, 1940. In it, he said, among other things:

> . . . While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.
>
> These powers have been granted to our law-enforcement agencies because it seems necessary that such a power to prosecute be lodged somewhere. This authority has been granted by people who really wanted the right thing done—wanted crime eliminated—but also wanted the best in our American traditions preserved.[26]
>
> * * * * *
>
> Nothing better can come out of this meeting of law enforcement officers than rededication to the spirit of

[26] Jackson, *The Federal Prosecutor*, 24 J. Am. Jud. Soc. 18 (1940).

fair play and decency that should animate the federal prosecutor. Your positions are of such independence and importance that, while you are being diligent, strict, and vigorous in law enforcement, you can also afford to be just. Although the Government technically loses its case, it has really won if justice has been done.[27]

Conclusion

In view of the foregoing, it is respectfully submitted that the judgment of conviction of appellant Thomas McNamara appealed from should be reversed and the indictment dismissed.

Dated: New York, New York
April 28, 1975

Respectfully submitted,

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[27] *Id.* at 18-19.

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

ANDREW J CUSACK being duly sworn, deposes and says that deponent is not a party to this action, is over 18 years of age and resides in the City of NEW YORK. State of NEW YORK. On APRIL 29, 1975 deponent served

upon: ROBERT PLAXICO, Esq
P. O BOX 14236
WASHINGTON, D. C. 20044

attorney(s) for party(s) in this action, at the address(es) designated by said attorney(s) for that purpose by:

REGISTERED MAIL [✓] RETURN RECEIPT REQUESTED — depositing a true copy(s) of the same securely enclosed in post-paid wrappers in a Post Office Box regularly maintained by the United States Postal Service ~~at No. 1 Office of Manhattan Plaza~~, in the City and County of New York, directed to said attorney(s) at the address(es) set out under his name(s); that being the address(es) ~~within the state~~ designated by him for that purpose in the preceding papers in this action.

LETTER DROP [ ] — depositing a true copy of the same, enclosed in a sealed wrapper directed to said attorney(s), in the letter drop or box of, and accessible from without, of said attorney(s) office at the address(es) set out under the name; and that said office was not open at the time of service.

PERSON IN CHARGE [ ] — delivering a copy of the same to and leaving the same with the person in charge of said office, said attorney(s) being absent therefrom at the time of said service.

Sworn to before me this 29th day of APRIL, 1975

Daniel F. Houlihan

Andrew J Cusack

DANIEL F. HOULIHAN
Notary Public, State of New York
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